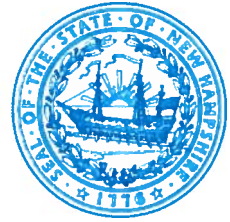




The State of New Hampshire  
**Department of Environmental Services**

**Thomas S. Burack, Commissioner**



January 19, 2016

The Honorable Robert Haefner, Chair  
House Environment and Agriculture Committee  
Legislative Office Building, Room 303  
Concord, New Hampshire 03301

Re: House Bill 1528-FN relative to standards for aerobic septic systems

Dear Chair Haefner and Members of the Committee:

Thank you for the opportunity to comment on House Bill 1528-FN, relative to standards for aerobic septic systems. House Bill 1528-FN would set standards for the permitting, operation and maintenance of septic systems (identified as an Individual Sewage Disposal System (ISDS) in New Hampshire Code of Administrative Rules Env-Wq 1000, the Subdivision and Individual Sewage Disposal System Design Rules (Rules)) utilizing enhanced treatment/pre-treatment units as part of an approved system. This bill would also create a new classified position that would oversee compliance and maintenance requirements for these units and would authorize the Commissioner of the New Hampshire Department of Environmental Services (NHDES) to fill that position. NHDES opposes this bill.

This bill, as drafted, does nothing to strengthen or enhance how NHDES regulates the approval and use of pre-treatment units in the state of New Hampshire. It proposes to actually weaken some of the protective measures already being taken by NHDES. In fact, everything discussed in the bill, with the exception of the addition of the new position, is already provided for in current laws and regulations. In short, there are already mechanisms in place for addressing the issues which are the subject of this bill.

NHDES currently has an Innovative/Alternative Technology Committee which reviews all applications for approval for use of such technologies. This committee includes members from the Water Division Director's Office, the Wastewater Engineering Bureau, the Subsurface Systems Bureau, the Drinking Water Groundwater Bureau and the NHDES Legal Unit. This committee's approvals, which must be obtained prior to the use of these units, are governed by regulations in Env-Wq 1024. Requirements for approval include the submission of test results to NHDES which demonstrate that the treatment unit treats wastewater to levels equal to or better than a conventional stone and pipe system. Required analyses include testing for 5 day biochemical oxygen demand (BOD<sub>5</sub>), total suspended solids (TSS), nitrogen, phosphorus and fecal coliform. The National Science Foundation (NSF) 40 Standard (cited in the bill on page 1 line 12) only tests for BOD<sub>5</sub> and TSS, while the NSF 245 Standard (also cited in the bill on page 1 line 12) includes only nitrogen. As such, the current requirements in Env-Wq 1024 are more

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stringent that what is included in this proposed legislation. There is no justification and there are no data to support the weakening of these basic protections of human health and the environment. These are design issues based on performance and should not be addressed in statute. Typically, applications for pre-treatment technologies include waiver requests for reduction in effluent disposal area (leachfield) sizing. If the Innovative/Alternative Technology Committee finds merit in those requests, they are granted.

If the legislature, notwithstanding the above objections, were to explore adoption of this legislation, numerous serious technical flaws would need to be addressed. The NHDES Subsurface Systems Bureau has historically reviewed and currently reviews all applications for proposed ISDSs, including those proposals which include pre-treatment units. All applications must include soil data which are typically obtained by logging a test pit and performing percolation tests. The proposed bill language requiring soil data to be “collected from fields surrounding all septic tank disposal system, regardless of the date of the system’s construction” (referenced in the bill on page 1 line 3) is ambiguous. There is no detail as to where the soil data should be collected, what parameters should be analyzed, who would be responsible for collecting the data and who would assume the financial burden of the collection and analysis. The New Hampshire Water Resources Primer, published in December 2008, estimates that two thirds of existing homes and the vast majority of new homes are served by an ISDS. To collect data from all of those existing systems would be a monumental undertaking that would provide no value to NHDES or the public.

In addition, the bill language references an “absorption area” (Part II, (d) starting on page 1 line 24) followed by a “reduction in the total absorption trench length of a traditional septic system. The trench length reduction may only be used for conventional absorption trench systems and shallow absorption trench systems”. NHDES receives very few applications employing “trench system” designs. Further, as written, this bill restricts any absorption area or effluent disposal area reductions to only trench systems. The bill language should be much broader to reference effluent disposal areas as defined in Env-Wq 1002.27 which states:

“Effluent disposal area (EDA)’, means an area designed for the final disposal of effluent, including the bed and any required fill extensions, in which effluent is dispersed using leach lines or dry wells.”

The bill language also includes requirements for an “effluent filter mechanism” (referenced in the bill on page 1 line 19) installed on the system outlet prior to discharge to the EDA. NHDES believes that it is the manufacturer’s prerogative as to whether a filter should be part of their treatment unit and should not be a statutory requirement. The units are approved by NHDES for use as they are tested as part of the application for approval process, with or without an effluent filter.

As indicated in the fiscal note prepared for this bill, the NHDES operating budget cannot support the costs of salary and benefits and other costs associated with hiring a new Environmentalist IV position to oversee the operation and maintenance of these types of units.

In summary, NHDES opposes this bill because the issues it raises are already fully and appropriately addressed in existing statute and rules, as written it is technically flawed, and NHDES's operating budget cannot support the new position the bill proposes to create. Further, it is the NHDES opinion that technical issues such as these are better addressed at the department level and should not be mandated in statute.

Thank you for the opportunity to provide comment on this bill. If you have any questions or require further information, please contact either Eugene Forbes, P.E., Director of the Water Division ([eugene.forbes@des.nh.gov](mailto:eugene.forbes@des.nh.gov), 271-0677) or Rene Pelletier, Assistant Director ([rene.pelletier@des.nh.gov](mailto:rene.pelletier@des.nh.gov), 271-2951).

Sincerely,

A handwritten signature in dark ink, appearing to read "Thomas S. Burack". The signature is fluid and cursive, with the first name "Thomas" and last name "Burack" clearly distinguishable.

Thomas S. Burack  
Commissioner

cc: Sponsors of HB 1528: Reps. Pitre, Whitehouse, Jones; Sen. Cataldo

